

APPEAL NO. 010724

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 23, 2001. With respect to the single issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. In his appeal, the claimant argues that the hearing officer's determinations that he had some ability to work in the qualifying period; that he did not make a good faith effort to look for work; and that he is not entitled to SIBs for the second quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the second quarter, which ran from August 25 to November 23, 2000, and had a corresponding qualifying period of May 13 to August 11, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work." The hearing officer determined that there was no narrative report that explained how the claimant's injury caused a total inability to work and that another record shows that the claimant is able to work. The hearing officer was acting within his province as the fact finder under Section 410.165(a) in making those determinations. Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, we will not disturb those determinations, or the determination that the claimant is not entitled to SIBs for the second quarter, on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In his appeal, the claimant also contends that the hearing officer applied an incorrect legal standard in evaluating the evidence of no ability to work. Specifically, the claimant argues that the hearing officer improperly failed to consider evidence from outside the qualifying period in resolving the issue of whether there was a sufficient narrative for purposes of Rule 130.102(d)(4). We find no merit in this assertion. At the hearing, the hearing officer specifically noted that he would consider medical evidence relating to the claimant's ability to work both before and after the quarter, in response to a relevance objection to the claimant's applications for third and fourth quarter SIBs. In the face of that statement, we cannot agree that the record reflects that the hearing officer applied an incorrect legal standard in this case.

The last argument in the claimant's appeal is that Rule 130.102(d)(4) "is invalid and in excess of the [Texas Workers' Compensation Commission's] rule making authority because it imposes burden and restrictions inconsistent with or contrary to the controlling statute, [Section 408.142(a)(4)]." Because of the limited nature of our jurisdiction, we are without the authority to consider the claimant's challenge to Rule 130.102(d)(4).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge